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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/918,049	07/30/2001	Julie A. Raye	KCC4711.1	9824

321 7590 04/26/2006

SENNIGER POWERS  
ONE METROPOLITAN SQUARE  
16TH FLOOR  
ST LOUIS, MO 63102

EXAMINER
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HAQ, NAEEM U

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 04/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/918,049	RAYE ET AL	
	Examiner	Art Unit	
	Naeem Haq	3625	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13, 15-31, 45, 48-52, 57 and 58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13, 15-31, 45, 48-52, 57 and 58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                         |                                                                             |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                                |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____                                                             | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

This action is in response to the Applicant's amendment filed February 9, 2006. Claims 14, 32-44, 46, 47, and 53-56 are cancelled. Claims 57 and 58 have been added. Claims 1-13, 15-31, 45, 48, 49-52, 57, and 58 are currently pending and will be considered for examination.

### ***Specification***

The amendment filed February 9, 2006 is objected to under 35 U.S.C. 132(a) because it introduces new matter into the disclosure. 35 U.S.C. 132(a) states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: Claim 58 recites the limitation "...wherein the periodically prompting is a function of the consumer cycle length and the accepted purchase order." There is no support for this limitation in the Applicants' specification.

Applicant is required to cancel the new matter in the reply to this Office Action.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 58 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This claim recites the limitation "...wherein the periodically prompting is a function of the consumer cycle length and the accepted purchase order." There is no support for this limitation in the Applicants' specification.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 1-3, 6-8, 10, 11, 15, 17, 18-21, 23-27, 30, 31, 45, 48-52, and 57 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman).**

Referring to claim 1: Unger teaches a method for selecting feminine hygiene products comprising determining at a first location an assortment of feminine care products for a consumer at a second location remote from the first location based on

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information provided by the consumer, the determined assortment of feminine care products including a quantity of at least one type of absorbent catamenial product

(Abstract, lines 2-9; col. 1, lines 9-36; col. 3, lines 8-16, lines 34-39; col. 4, lines 31-35; col. 15, lines 12-16). Unger does not teach that the quantity is a non-commercial quantity.

However, the Examiner notes that this limitation is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional

descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of the quantity of the products order. The difference

between the Applicants' quantity and the prior art is merely subjective. Thus this

nonfunctional descriptive material will not distinguish the claimed invention from the

prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ

401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)

also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary

skill in the art at the time the invention was made to order any quantity in the invention

of Unger because such information does not functionally relate to the steps of the

claimed method and because the subjective interpretation of information does not

patentably distinguish the claimed invention. Unger also does not teach accepting at a

first location a purchase order placed by a consumer at a second location, processing

the purchase order, and prompting the consumer to place another purchase order for

products. However, Hartman discloses a method of placing a purchase order for a

product over a communications network wherein a consumer operating a computer at

one location (i.e. second location) (Figure 2, item "220") places a purchase order that is

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accepted and processed by server at another location (i.e. first location) (Figure 2, item "210"; Abstract, lines 1-3, lines 13-21; col. 2, lines 51-62; col. 3, lines 46-64). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52). Unger does not teach prompting the consumer to place another purchase order for the products. However, Hartman discloses a method of placing a purchase order for a product over a communications network wherein a consumer is prompted to "Continue Shopping" (Figure 1C, item "108"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to generate more business from a consumer as suggested by Hartman.

Referring to claim 2: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the information is provided through a computer network (col. 3, lines 34-39; col. 15, lines 12-16). Unger does not teach that the purchase order is placed by the consumer through a computer network. However, Hartman teaches this limitation (Abstract, lines 1-3). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature of Hartman into the method of Unger. One of ordinary skill in

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the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52).

Referring to claim 3: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the determined assortment of feminine care products includes a quantity of multiple types of absorbent catamenial products (col. 3, lines 44-47: "Each system of feminine hygiene products containing at least two different kinds of feminine hygiene products may be packaged in a common package which is made available to the consumer"). Unger does not teach that the quantity is a non-commercial quantity. However, the Examiner notes that this limitation is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of the quantity of the products order. The difference between the Applicants' quantity and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to order any quantity in the invention of Unger because such information does not functionally relate to the steps of the claimed method and because the subjective interpretation of information does not patentably distinguish the claimed invention.

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Referring to claim 6: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Unger teaches that the determining step includes presenting questions to the consumer regarding her monthly cycle, and said information represents the consumer's answers to said questions (col. 4, lines 44-49; col. 5, lines 39-41).

Referring to claim 7: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches that the purchase order includes payment information (Figure 1C, item "108": "Payment Method"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to exploit the commercial potential of the Internet and World Wide Web as taught by Hartman (col. 1, lines 45-52).

Referring to claim 8: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches that the purchase order includes a target delivery date (Figure 1C: "The 1-click orders below (available in 3 or fewer days) will be shipped together"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to inform the consumer of the delivery date of the products.

Referring to claims 10 and 11: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches the step of



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fulfilling the purchase order placed by the consumer (claim 1, lines 17 and 18). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to complete the purchase of the item as taught by Hartman.

Referring to claim 15: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. Furthermore, Hartman teaches sending an email to the consumer to "Continue Shopping" (Figure 1C, item "108", col. 6, lines 22-28). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Hartman into the method of Unger. One of ordinary skill in the art would have been motivated to do so in order to generate more business from a consumer as suggested by Hartman.

Referring to claim 17: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the prompting step includes advising the consumer of the assortment of products last ordered by the consumer. However, the Examiner notes that the content of the prompt is not functionally involved in the steps of the claimed method. Therefore this limitation is deemed to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of what information was contained in the prompt. The difference between the content of the Applicants' prompt and the prior art is merely subjective. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re*

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*Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to place any information in the prompt of the cited prior art because such information does not functionally relate to the steps of the claimed method and because the subjective interpretation of information does not patentably distinguish the claimed invention.

Referring to claims 18 and 57: Claims 18 and 57 are rejected under the same rationale as set forth above in claim 1.

Referring to claims 19-21: Claims 19-21 are rejected under the same rationale as set forth above in claim 3.

Referring to claim 23 and 24: Claims 23 and 24 are rejected under the same rationale as set forth above in claim 2.

Referring to claim 25: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. Furthermore, Hartman teaches the step of allowing the consumer to revise the products prior to placing a purchase order (Figure 1C: "Press this button if you Changed Quantities of any item below"). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow a user to change quantities prior to placing an order as suggested by Hartman.

Referring to claim 26: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. Furthermore, Unger teaches the recommending step includes recommending an assortment of feminine care products expected to meet the consumer's needs for one monthly cycle (col. 3, lines 17-19).

Referring to claim 27: The cited prior art teaches or suggests all of the limitations of claim 26 as noted above. Furthermore, Hartman discloses accepting a purchase order from the consumer for multiple units of a product (Figure 1C). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the user to select different quantities of a product as suggested by Hartman.

Referring to claims 30 and 31: Claims 30 and 31 are rejected under the same rationale as set forth above in claim 10 and 11.

Referring to claim 45: Claim 45 is rejected under the same rationale as set forth above in claim 1.

Referring to claims 48 and 49: Claims 48 and 49 are rejected under the same rationale as set forth above in claim 2.

Referring to claim 50: Claim 50 is rejected under the same rationale as set forth above in claim 26.

Referring to claim 51: Claim 51 is rejected under the same rationale as set forth above in claim 10.

Referring to claim 52: Claim 52 is rejected under the same rationale as set forth above in claim 1.

**Claims 4 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of "From sanitation to liberation?: The modern and postmodern marketing of menstrual products" by Shelley M. Park (hereafter referred to as Park).**

Referring to claim 4: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the feminine care products include at least one product selected from the group consisting of menstrual cramp medication and contraceptives. However, Park examines the marketing of menstrual products. In particular, Park states "A complete account of the ideological underpinnings of feminine hygiene products would examine the connections between the marketing of soaps, cleansers, menstrual aids and nonprescription contraceptives and home pregnancy tests" (Park: Footnote 1). The Examiner notes that menstrual aids such as Midol and nonprescriptive contraceptives are included in a complete account of feminine hygiene products. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify the cited prior art to include at least one product selected from the group consisting of menstrual cramp medication and contraceptives as taught by Park. One of ordinary skill in the art would have been motivated to do so in order to relieve symptoms associated with PMS (Park Pages 8-9).

Referring to claim 22: Claim 22 is rejected under the same rationale as set forth above in claim 4.

**Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view US 5,947,302 to Miller.**

Referring to claim 5: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach that the information represents a selection by the consumer of products which comprise the determined assortment of feminine care products. However, Miller discloses a method for dispensing absorbent articles wherein an individual selects the determined assortment of feminine care products (col. 2, lines 25-31). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Miller into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to optimize the use of the products (col. 2, lines 34-39).

**Claims 9 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0019778 A1 to Isaacson et al. (hereafter referred to as Isaacson).**

Referring claim 9: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach the step of storing data representing the determined assortment of feminine care products for subsequent

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retrieval and use with the consumer. However, Isaacson discloses a method for placing on-line orders wherein previous purchase orders stored in a database are displayed to a user for subsequent use by the user (paragraph [0099]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Isaacson into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the user re-create or edit a previous order as taught by Isaacson (paragraph [0099]).

Referring to claim 29: Claim 29 is rejected under the same rationale as set forth above in claim 9.

**Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0050526 to Swartz et al. (hereafter referred to as Swartz).**

Referring to claim 12: The cited prior art teaches or suggests all of the limitations of claim 11 as noted above. The cited prior art does not teach delivering the ordered products to the consumer along with a reusable storage container for said ordered products. However, Swartz discloses a fulfillment system that uses reusable totes (i.e. bags) for delivery (paragraph [0143]). Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate the teachings of Swartz into the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to allow the consumer to reuse the totes (i.e. bags) in the future.

**Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of US2002/0050526 to Swartz et al. (hereafter referred to as Swartz) and Official Notice.**

Referring to claim 13: The cited prior art teaches or suggests all of the limitations of claim 12 as noted above. The cited prior art does not teach that subsequent orders are delivered to the consumer without a reusable storage container. However, Official Notice is taken that it is old and well known in the art for a vendor to not deliver a storage container to a consumer on a subsequent order. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to not deliver a storage container to a consumer on a subsequent order in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to conserve storage containers.

**Claims 16 and 28 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,093,027 to Unger et al. (hereafter referred to as Unger) in view of US 5,960,411 to Hartman et al. (hereafter referred to as Hartman) and further in view of Official Notice.**

Referring to claim 16: The cited prior art teaches or suggests all of the limitations of claim 1 as noted above. The cited prior art does not teach periodically prompting the consumer to place another purchase order. However, Official Notice is taken that it is old and well known in the art to periodically prompt a user to take an action. Therefore

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it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate this feature into the method of the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to get the user to perform the action.

Referring to claim 28: The cited prior art teaches or suggests all of the limitations of claim 18 as noted above. The cited prior art does not teach standing purchase order for the products. However, Official Notice is taken that standing orders are old and well known in the art. Therefore it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to incorporate a standing order in the cited prior art. One of ordinary skill in the art would have been motivated to do so in order to have the convenience of periodic delivery of a product without the hassle of submitting a new purchase order.

### ***Response to Arguments***

Applicants' arguments with respect to claims 1, 5, 9, 12, 13, 18, 29, and 45 have been fully considered but they are not persuasive. The Applicants have argued that Hartman does not teach prompting the consumer to place another order because the "continue shopping" of Hartman does not appear in specification; and therefore, Hartman is silent on the function of the "continue shopping" feature. The Examiner respectfully disagrees with this argument because Hartman's drawings are part of the specification. Therefore, Hartman explicitly teaches prompting the consumer to place another order. Furthermore the limitation "...for products corresponding to the



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determined assortment of feminine care products” appears to be nonfunctional descriptive material. The steps of determining, accepting, and prompting would be performed the same regardless of the type of product. Thus this nonfunctional descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994) also see MPEP 2106.

Applicants’ arguments with respect to claims 16 and 28 have been noted. The Applicants have traversed the Examiner’s use of Official Notice against these claims and have requested a reference to support the Official Notice. The Examiner cites US Patent 6,915,271 B1 to Meyer et al. (“Meyer”) in support of the Official Notice of claim 16. Meyer discloses periodically delivering targeted information to a consumer (col. 9, lines 56-67; claims 66 and 74). The Examiner cites US Publication 2002/0095345 A1 to Panelli et al. (“Panelli”) in support of the Official Notice of claim 28. Panelli discloses accepting a standing purchase order (Abstract; [0036]).

The Examiner notes that the Applicants did not respond to the Examiner’s Official Notice rejection of claim 13 in the previous Office Action. In order to adequately traverse a rejection based on common knowledge (i.e. Official Notice), an Applicant must specifically point out the supposed errors in the Examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. A general allegation that the claims define a patentable invention without any reference to the Examiner’s assertion of Official Notice is inadequate. In the

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present case, the Applicants did not respond to the Examiner's rejection using Official Notice. Furthermore, the Applicants failed to argue why the noticed fact is not considered to be common knowledge or well-known in the art. Instead, the Applicants have provided a general allegation of patentability of claim 13. For this reason, Applicants' response is considered to be an inadequate traversal of the Official Notice used by the Examiner in the rejection of claim 13 under 35 U.S.C. §103.

Since the Applicants have failed to seasonably challenge the Examiner's Official Notice presented in the previous Office Actions, the Examiner now interprets all Official Notices as admitted prior art. *Applicant must seasonably challenge well known statements and statements based on personal knowledge when they are made. In re Selmi, 156 F.2d 96, 70 USPQ 197 (CCPA 1946). If Applicant does not seasonably traverse the well known statement during examination, then the object of the well known statement is taken to be admitted prior art. In re Chevenard, 139 F.2d71, 60 USPQ 239 (CCPA 1943). Also see MPEP 2144.03.*

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

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TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Naeem Haq whose telephone number is (571)-272-6758. The examiner can normally be reached on M-F 8:00am-5:00pm.

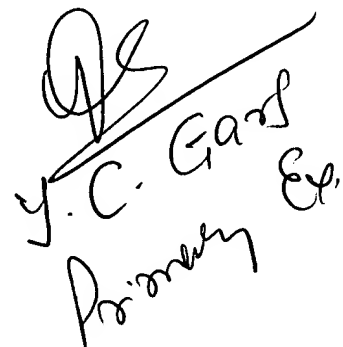
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogesh Garg can be reached on (571)-272-6756. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Naeem Haq**, Patent Examiner  
Art Unit 3625

April 24, 2006



Y.C. Garg  
Primary Ex.